

STATE OF MICHIGAN
IN THE SUPREME COURT

DANIEL KNUE, JACQUELINE KNUE,

Plaintiffs/Appellees,

v

CORNELIUS "CASEY" SMITH,
JOAN SMITH, and STEVE SMITH

Defendants/Appellants.

S.C. No. _____

COA No. 255702

L.C. No. 02-43890-CE

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DEFENDANTS/APPELLANTS' REPLY BRIEF IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL

130377
reply

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Introduction

Defendants rely on the framing of the issues, and the facts and argument set forth in their Application for Leave to Appeal, and suggest that Plaintiff's response fails to refute Defendants' argument that this Court should peremptorily reverse or, at a minimum, grant leave to appeal. In further reply to Plaintiff's response to the application, Defendants argue as follows.

I. MCR 2.405, THE OFFER OF JUDGMENT RULE, SHOULD NOT APPLY TO A QUIET TITLE ACTION SEEKING SOLELY EQUITABLE REMEDIES.

Contrary to Plaintiffs' arguments, the instant case was limited to the equitable determination of one's interest in land, thereby negating the purpose of MCR 2.405. In promulgating the Michigan court rules, this Court recognized the special aspects of proceedings involving real property by devoting several matter specific court rules. *See e.g.*, MCR 3.401 – 3.412. MCR 3.411 addresses civil actions to determine interests in land.¹

¹ Rule 3.411 Civil Action to Determine Interests in Land, states:

(A) This rule applies to actions to determine interests in land under MCL 600.2932. It does not apply to summary proceedings to recover possession of premises under MCL 600.5701-600.5759.

(B) Complaint.

- (1) The complaint must describe the land in question with reasonable certainty by stating
 - (a) the section, township, and range of the premises;
 - (b) the number of the block and lot of the premises; or
 - (c) another description of the premises sufficiently clear so that the premises may be identified.

(2) The complaint must allege

- (a) the interest the plaintiff claims in the premises;
- (b) the interest the defendant claims in the premises; and
- (c) the facts establishing the superiority of the plaintiff's claim.

(C) Written Evidence of Title to be Referred to in Pleadings.

(1) Written evidence of title may not be introduced at trial unless it has been sufficiently referred to in the pleadings in accordance with this rule.

(2) The plaintiff must attach to the complaint, and the defendant must attach to the answer, a statement of the title on which the pleader relies, showing from whom the title was obtained and the page and book where it appears of record.

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- (3) Within a reasonable time after demand for it, a party must furnish to the adverse party a copy of an unrecorded conveyance on which he or she relies or give a satisfactory reason for not doing so.
- (4) References to title may be amended or made more specific in accordance with the general rules regarding amendments and motions for more definite statement.
- (D) Findings As to Rights in and Title to Premises.
- (1) After evidence has been taken, the court shall make findings determining the disputed rights in and title to the premises.
- (2) If a party not in possession of the premises is found to have had a right to possession at the time the action was commenced, but that right expired before the trial, that party must prove the damages sustained because the premises were wrongfully withheld, and the court shall enter judgment in the amount proved.
- (E) Claim for Reasonable Value of Use of Premises.
- (1) Within 28 days after the finding of title, the party found to have title to the premises may file a claim against the party who withheld possession of the premises for the reasonable value of the use of the premises during the period the premises were withheld, beginning 6 years before the action was commenced.
- (2) The court shall hear evidence and make findings, determining the value of the use of the premises.
- (a) The findings must be based on the value of the use of the premises in their condition at the time the withholding party, or those through whom that party claims, first went into possession. The use of the buildings or improvements put on the land by the party who withheld possession may not be considered.
- (b) The findings must be based on the general value of the use of the premises, not on a peculiar value the use of the premises had to the party who withheld possession or might have had to the party who had title.
- (F) Claim for Value of Buildings Erected and Improvements Made on Premises.
- (1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.
- (2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.
- (3) The party claiming the value of the improvements may not recover their value if they were made in bad faith.
- (G) Election by Party in Title.
- (1) The person found to have title to the premises may elect to abandon them to the party claiming the value of the improvements and to take a judgment against that party for the value the premises would have had at the time of the trial if they had not been improved. The election must be filed with the court within 28 days after the findings on the claim

MCR 3.411 and its statutory counterpart, MCL §600.2932² provide a comprehensive remedy to determine one's interest in disputed land. MCR 3.411 provides specific pleading

for improvements. The judgment for the value of the premises is a lien against the premises.

(2) If the person found to have title does not elect to abandon the premises under subrule (G)(1), the judgment will provide that he or she recover the premises and pay the value of the improvements to the clerk of the court within the time set in the judgment.

(a) The person found to have title must pay the amount, plus accrued interest, before taking possession of the premises under the judgment, if that person is not already in possession.

(b) If the person found to have title fails to pay the amount of the judgment and the accrued interest within the time set in the judgment, he or she is deemed to have abandoned all claim of title to the premises to the parties in whose favor the judgment for the value of the improvements runs.

(H) Judgment Binding Only on Parties to Action. The judgment determining a claim to title, equitable title, right to possession, or other interests in lands under this rule, determines only the rights and interests of the known and unknown persons who are parties to the action, and of persons claiming through those parties by title accruing after the commencement of the action.

(I) Possession Under Judgment Not to be Affected by Vacation of Judgment Alone. When the judgment in an action under these rules determines that a party is entitled to possession of the premises in dispute, that party's right to possession is not affected by vacation of the judgment and the granting of a new trial, until a contrary judgment is rendered as a result of the new trial.

² MCL 600.2932 Quieting title; interest of plaintiff; action by mortgagee; establishment of title; tenancy in common; actions, states:

(1) Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

(2) No action may be maintained under subsection (1) by a mortgagee, his assigns, or representatives for recovery of the mortgaged premises, until the title to the mortgaged premises has become absolute, or by a person for the recovery of possession of premises, which were sold on land contracted, to whom relief is available under subdivision (1) of section 5634.

(3) If the plaintiff established his title to the lands, the defendant shall be ordered to release to the plaintiff all claims thereto. In an appropriate case the court may issue a writ of possession or restitution to the sheriff or other proper officer of any county in this state in which the premises recovered are situated.

(4) Any tenant or tenants in common who recovers any undivided interest in lands in an action under subsection (1) against a person or persons who may be in possession thereof, but who does

requirements and other instructions to the circuit court when making findings determining the disputed rights in and title to the property at issue. Further, MCL §600.2932(5) recognizes proceedings to determine interest in land to be “equitable in nature” and there is no right to trial by jury in such actions.

MCR 3.411 and MCL §600.2932 reinforce that disputes involving one’s interest in real property are equitable in nature and not effectively addressed by MCR 2.405 because they often do not involve any monetary considerations. Under the Court of Appeals Opinion, sensitive issues such as one’s interest in access rights to water will be subject to a party’s offer of judgment even when the sole purpose of the action is to determine one’s interest in the disputed land, *i.e.*, ability to access property, utilize an easement or determine a disputed boundary lines.

The instant case, and any other case addressing one’s interest in land, is not a determination of liability or damages and offers to stipulate to the entry of judgment are hollow and lack the purpose for which MCR 2.405 is designed.

Plaintiffs recognize the inapplicability of the offer of judgment rule to the instant action when they state in their Brief in Opposition that “the value of the real property in dispute was not an issue at trial, rather, Plaintiffs’ case dealt with the location of the boundary line.” (Appellees’ Brief in Opposition to Application for Leave to Appeal, p 14).

not show in the trial of such action that he or they have any interest therein or title thereto, may take possession of the entire premises subject to all of the rights and interest of the other tenant or tenants in common therein.

(5) Actions under this section are equitable in nature.

Contrary to Plaintiffs' arguments and the Court of Appeals Opinion, any offer to stipulate to the entry of judgment pursuant to MCR 2.405 engages in gamesmanship. As such, allowing the Court of Appeals Opinion to have its intended effect will adversely effect each and every real property action filed in the State of Michigan and subject the party to offer of judgment sanctions when the sole issue is to determine one's interest in a particular piece of real property. Taken to its logical conclusion, one could file an offer to stipulate to the entry of a judgment pursuant to MCR 2.405 in a partition action governed by MCR 3.401 or in an action to determine if one has an easement interest in a particular piece of land that would enable the property owner to access one of the Great Lakes. MCR 2.405 was not intended to apply to actions when the primary issue is to determine one's interest in real property.

Thus, the submission of a monetary offer to stipulate to the entry of judgment in an action to determine interest in land is meaningless. The purpose of MCR 2.405 is to "encourage settlement and deter protracted litigation" in claims involving monetary damages. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 603; 609 NW2d 203 (2000). Disputes over one's interest in real property are not effectively addressed by this process.

For these reasons, the Court of Appeals reversibly erred in concluding that MCR 2.405 applied to Plaintiffs' quiet title action, and this Court should either peremptorily reserve or grant leave to appeal to consider the issue.

II. PLAINTIFFS' COUNSEL'S MAY 16, 2003 LETTER DID NOT QUALIFY AS AN "OFFER OF JUDGMENT" UNDER MCR 2.405(A)(1).

Plaintiffs' counsel acknowledges the inarticulate nature of his May 16, 2003 letter setting forth the alleged offer under MCR 2.405 to stipulate to the entry of judgment. Plaintiffs acknowledge, however, the May 16, 2003 letter contained conditions separate from simply dismissing claims. Transfer of ownership interest in the disputed property was a condition of

Defendants receiving any monetary compensation. Both the trial court and Court of Appeals refused to address that a condition of Plaintiffs' offer was the transfer of title to the subject property. The transfer of title to the subject property was the primary consideration for Plaintiffs/Appellees' offer and is sufficient to render MCR 2.405 inapplicable. The Court of Appeals' refusal to adequately address this issue itself warrants preemptory reversal.

III. RELIEF

For the reasons set forth in this Reply and Defendants/Appellants' application for leave to appeal, Defendants-Appellants respectfully request that this Court either

- (1) peremptorily reverse the Court of Appeal's December 15, 2005 opinion; or
- (2) grant leave to appeal the Court of Appeal's opinion and review the issues presented in Defendants' application. Defendants' further request any and all other relief to which they are entitled.

Dated:

3/6/06

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PROOF OF SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF)

Laura L. Cushman being first duly sworn deposes and says on the 6th day of March, 2006, s/he caused to be served a copy of Defendants/Appellants' Reply Brief in Support of Application for Leave to Appeal and this Certificate of Service upon the following:

Appellate Clerk
Ottawa County Circuit Court
414 Washington Street
Grand Haven, MI 49417

Clerk of the Court
Michigan Court of Appeals
State of Michigan Building
350 Ottawa NW
Grand Rapids, MI 49503-2349

Paul A. Ledford
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512 Washington Avenue
Grand Haven, MI 49417

by enclosing the same in a pre-addressed, pre-stamped envelope and depositing the same
in the United States Mail.

Laura A. Ledford

Subscribed and sworn before me this 6th day of March, 2006.

Laura L. Robbins

/Notary Public

County, Michigan

My Commission Expires: _____

Branches.18147.51714.1492426-1

LAURA L. ROBBINS
NOTARY PUBLIC, STATE OF MI
COUNTY OF INGHAM
MY COMMISSION EXPIRES Feb 15, 2011
ACTING IN COUNTY OF Ingham